

Representative Mike Schultz proposes the following substitute bill:

OFFICE OF RAIL SAFETY

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill creates the Office of Rail Safety within the Department of Transportation.

Highlighted Provisions:

This bill:

- ▶ creates the Office of Rail Safety;
- ▶ requires application and a request for certification with the Federal Railroad

Administration;

- ▶ upon certification, requires the Office of Rail Safety to assume the inspection and investigation functions in certain aspects of the railroad operations;

- ▶ allows the Office of Rail Safety to regulate and monitor time limits on the blocking of railroad-highway grade crossings;

- ▶ requires railroads to pay a fee to cover the costs of the inspections;

- ▶ grants rulemaking power to the Department of Transportation to make rules related to the implementation of the Office of Rail Safety and employee safety standards related to walkways and clearances; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 This bill provides a coordination clause.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **72-1-203**, as last amended by Laws of Utah 2019, Chapter 479

31 ENACTS:

32 **72-17-101**, Utah Code Annotated 1953

33 **72-17-102**, Utah Code Annotated 1953

34 **72-17-103**, Utah Code Annotated 1953

35 **72-17-104**, Utah Code Annotated 1953

36 **72-17-105**, Utah Code Annotated 1953

37 **72-17-106**, Utah Code Annotated 1953

38 **72-17-107**, Utah Code Annotated 1953

39 **72-17-108**, Utah Code Annotated 1953

40 **Utah Code Sections Affected by Coordination Clause:**

41 **72-7-102**, Utah Code Annotated 1953

42 **72-7-601**, Utah Code Annotated 1953

43 **72-7-602**, Utah Code Annotated 1953

44 **72-17-201**, Utah Code Annotated 1953

45 **72-17-202**, Utah Code Annotated 1953



47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **72-1-203** is amended to read:

49 **72-1-203. Deputy director -- Appointment -- Qualifications -- Other assistants**
50 **and advisers -- Salaries.**

51 (1) The executive director shall appoint two deputy directors, who shall serve at the
52 discretion of the executive director.

53 (2) (a) The deputy director of engineering and operations shall be a registered
54 professional engineer in the state and is the chief engineer of the department.

55 (b) The deputy director of engineering and operations shall assist the executive director
56 with areas of responsibility that may include:

- 57 (i) project development, including statewide standards for project design and
- 58 construction, right-of-way, materials, testing, structures, and construction;
- 59 (ii) oversight of the management of the region offices described in Section [72-1-205](#);
- 60 (iii) operations and traffic management;
- 61 (iv) oversight of operations of motor carriers and ports;
- 62 (v) oversight and enforcement of railroad safety requirements as described in Chapter

63 17, Office of Rail Safety;

- 64 [~~(v)~~] (vi) transportation systems safety;
- 65 [~~(vi)~~] (vii) aeronautical operations; and
- 66 [~~(vii)~~] (viii) equipment for department engineering and maintenance functions.

67 (c) The deputy director of planning and investment shall assist the executive director
68 with areas of responsibility that may include:

- 69 (i) oversight and coordination of planning, including:
 - 70 (A) development of statewide strategic initiatives for planning across all modes of
 - 71 transportation;
 - 72 (B) coordination with metropolitan planning organizations and local governments; and
 - 73 (C) corridor and area planning;
- 74 (ii) asset management;
- 75 (iii) programming and prioritization of transportation projects;
- 76 (iv) fulfilling requirements for environmental studies and impact statements;
- 77 (v) resource investment, including identification, development, and oversight of
- 78 public-private partnership opportunities;
- 79 (vi) data analytics services to the department;
- 80 (vii) corridor preservation;
- 81 (viii) employee development;
- 82 (ix) maintenance planning; and
- 83 (x) oversight and facilitation of the negotiations and integration of public transit
- 84 providers described in Section [17B-2a-827](#).

85 Section 2. Section **72-17-101** is enacted to read:

86 **CHAPTER 17. RAIL SAFETY**

87 **Part 1. Office of Rail Safety**

88 72-17-101. Office of Rail Safety -- Creation -- Applicability.

89 (1) In accordance with 49 C.F.R. Part 212, State Safety Participation Regulations, there
90 is created within the department an Office of Rail Safety.

91 (2) As described in 49 C.F.R. Secs. 212.105 and 212.107, to organize the Office of
92 Rail Safety, the executive director shall:

93 (a) enter into an agreement with the Federal Railroad Administration to participate in
94 inspection and investigation activities; and

95 (b) obtain certification from the Federal Railroad Administration to undertake
96 inspection and investigative responsibilities and duties.

97 (3) In establishing the Office of Rail Safety in accordance with the duties described in
98 49 C.F.R. Part 212, the department may hire personnel and establish the duties of the office in
99 phases.

100 (4) This chapter applies to:

101 (a) a class I railroad; and

102 (b) commuter rail.

103 Section 3. Section **72-17-102** is enacted to read:

104 **72-17-102. Definitions.**

105 As used in this chapter:

106 (1) "Class I railroad" means the same as that term is defined in 49 U.S.C. Sec. 20102.

107 (2) "Commuter rail" means the same as that term is defined in Section [63N-3-602](#).

108 (3) "Federal Railroad Administration" means the Federal Railroad Administration
109 created in 49 U.S.C. Sec. 103.

110 (4) "Office" means the Office of Rail Safety created in accordance with Section
111 [72-17-101](#).

112 (5) "Railroad" means the same as that term is defined in 49 C.F.R. Sec. 200.3.

113 Section 4. Section **72-17-103** is enacted to read:

114 **72-17-103. Duties of the Office of Rail Safety.**

115 (1) In accordance with 49 C.F.R. Part 212, and the authorization granted from the
116 Federal Railroad Administration, the office shall perform the inspection, compliance, and
117 enforcement duties in the following areas:

118 (a) grade crossings;

- 119 (b) hazardous materials;
120 (c) motive power and equipment;
121 (d) operating practices;
122 (e) signal and train control; and
123 (f) track.
- 124 (2) As part of the responsibilities described in Subsection (1), the office shall:
125 (a) inspect and investigate railroad rights-of-way, facilities, equipment, and operations
126 of railroads in this state;
127 (b) notify a railroad of any violation or lack of compliance with applicable state and
128 federal laws, rules, regulations, orders, and directives;
129 (c) enforce applicable state and federal laws, rules, regulations, orders, and directives
130 relating to the transportation by rail of persons or commodities; and
131 (d) issue orders to require compliance with state and federal laws, rules, regulations,
132 orders, and directives.
- 133 (3) The office shall employ a sufficient number of federally certified inspectors and
134 staff to ensure that railroad equipment, facilities, and tracks are inspected as frequently as
135 reasonably required to ensure compliance and safety as required under state and federal law.
- 136 (4) (a) The office shall investigate railroad practices related to the length of time a
137 railroad blocks a highway-railroad grade crossing.
- 138 (b) Upon petition of a political subdivision, or upon the office's own motion, the office
139 may:
140 (i) conduct an investigation of the conditions related to a grade crossing; and
141 (ii) if necessary, conduct a hearing, make findings, and issue an order to determine
142 whether highway-railroad crossing blocking practices of the railroad are reasonable.
- 143 (c) (i) The office shall examine and inspect the physical condition of all railroad
144 facilities in this state to ensure compliance with safety requirements.
145 (ii) As part of the inspection and examination of railroad facilities and crossings, the
146 office shall include an examination and inspection of:
147 (A) the condition of railroad facilities and crossing infrastructure;
148 (B) whether expansion of grade crossing infrastructure or other changes are justified
149 based on the traffic and safety conditions; and

- 150 (C) other safety considerations required by federal law.
- 151 (d) If the office determines that a railroad's highway-railroad crossing blocking
- 152 practices are unreasonable, the office shall:
- 153 (i) request the Federal Rail Administration take enforcement actions pursuant to 49
- 154 C.F.R. Sec. 212.115; and
- 155 (ii) notify the Surface Transportation Board defined in 49 U.S.C. Sec. 10102 of the
- 156 unsafe and unreasonable practices.
- 157 (e) If the office finds a violation of safety requirements as described in this section or
- 158 in federal law, and the office requests an enforcement action and Federal Rail Administration
- 159 does not take enforcement action as described in 49 C.F.R. Sec. 212.115, the office may seek a
- 160 civil penalty not less than \$500 and no more than \$10,000 for each offense.
- 161 (5) (a) The office shall examine and inspect the physical condition of all railroad
- 162 facilities in this state to ensure compliance with safety requirements.
- 163 (b) If an inspector determines that a railroad facility is noncompliant, the office shall
- 164 provide written notice to the railroad.
- 165 (c) If a railroad receives a notice described in Subsection (5)(b), the railroad shall
- 166 remedy the condition or practice within 30 days of the date of the notice.
- 167 (d) If after 30 days from the date of the notice the railroad has not remedied the
- 168 condition or practice to the office's satisfaction, the office may set the matter for hearing.
- 169 (e) After a hearing described in Subsection (5)(d), if the office determines that the
- 170 condition or practice is noncompliant and the railroad has not made reasonable efforts to
- 171 remedy the condition or practice, the office may issue an order requiring the railroad to:
- 172 (i) eliminate or remedy the unsafe or unlawful condition or practice; or
- 173 (ii) make any necessary repairs, alterations, or other changes to the relevant condition
- 174 or practice to ensure compliance with state and federal law.
- 175 (f) In addition to any order issued under Subsection (5)(e), after a hearing described in
- 176 Subsection (5)(d), if the office determines that the condition or practice is noncompliant and
- 177 the railroad has not made reasonable efforts to remedy the condition or practice, and the
- 178 condition or practice is so hazardous as to place a railroad employee or the public in immediate
- 179 danger, the office may issue an order requiring the railroad:
- 180 (i) after 48 hours' written notice to the railroad, issue an order prohibiting:

- 181 (A) the unsafe or unlawful practice; or
182 (B) the use of the facility until completion of the necessary repair, alteration, or other
183 necessary changes; and
184 (ii) pay a civil penalty of not more than \$10,000 per violation or per day of violation of
185 state or federal law, or a rule made in accordance with Subsection (6) or Section [72-17-107](#).
186 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
187 department shall make rules necessary to:
188 (a) establish the Office of Rail Safety as required in this part;
189 (b) establish and enforce rules regarding safe and reasonable procedures and standards
190 regarding the blocking of grade crossings, which standards and limits shall be commensurate
191 with reasonable requirements of train and vehicular traffic operations;
192 (c) enforce this part and relevant state and federal law related to this part; and
193 (d) administer the Office of Rail Safety as described in this part.
194 Section 5. Section **72-17-104** is enacted to read:
195 **72-17-104. Federal Railroad Administration Grant Program.**
196 After reaching an agreement with and receiving the certification from the Federal
197 Railroad Administration as described in Section [72-17-101](#), the office may apply for Railroad
198 Safety Grants as often as permitted by the Federal Rail Administration.
199 Section 6. Section **72-17-105** is enacted to read:
200 **72-17-105. Establishment of administrative fees -- Payment -- Expenditures.**
201 (1) (a) The office shall annually determine a fee to be paid by each railroad that
202 operated within the state and is subject to the jurisdiction of the office on a pro rata basis as
203 described in Subsection (2).
204 (b) The office and the department shall establish the annual fee to produce a total
205 amount not less than the amount required to regulate railroads and carry out the duties
206 described in this part.
207 (c) The office shall use the revenue generated by the fees paid by each railroad for the
208 investigation and enforcement activities of the office as authorized under this part.
209 (2) (a) For grade crossings inspections and services, the office shall establish and each
210 railroad shall pay a fee based on:
211 (i) as of January 1 of each year, the number of crossings the railroad operates within

212 this state that cross a highway, whether at grade, by overhead structure, or subway; and

213 (ii) the frequency of use of each crossing the railroad operates, including:

214 (A) the frequency of train operation at the crossing; and

215 (B) the frequency of highway traffic at the crossing.

216 (b) For hazardous materials related inspections and services, the office shall establish

217 and each railroad shall pay a fee based on the tonnage of hazardous materials transported in this

218 state during a given year.

219 (c) For motive power and equipment related inspections and services, the office shall

220 establish and each railroad shall pay a fee based on the number of motive power units and other

221 equipment units operated by the railroad in this state.

222 (d) For track related inspections and services, the office shall establish and each

223 railroad shall pay a fee based on the number of miles of track owned or operated by the railroad

224 within this state.

225 (e) For signal and train control inspections and services, as well as operating practices

226 inspections and services, the office shall establish and each railroad shall pay a fee based on

227 gross operating revenue of each railroad generated within this state.

228 (f) (i) For inspection services related to commuter rail, notwithstanding any other

229 agreement, a county or municipality with commuter rail service provided by a public transit

230 district may request local option transit sales tax in accordance with Section [59-12-2206](#) and

231 spend local option transit sales tax in the amount requested by the office.

232 (ii) A county or municipality that requests local option transit sales tax as described in

233 Subsection (2)(f)(i) may transmit to the office the funds requested under Subsection (2)(f)(i)

234 and transmitted to the county or municipality under Subsection [59-12-2206\(5\)\(b\)](#).

235 (iii) A county or municipality that requests local option transit sales tax as described in

236 Subsection (2)(f)(i) may not request more local option transit sales tax than is necessary to

237 carry out the safety inspection and functions under this chapter.

238 (iv) The office is not required to charge or collect a fee related to inspections of

239 commuter rail.

240 (3) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

241 the department shall make rules to establish each of the fee amounts described in Subsection

242 (2):

243 (i) according to the data described in Subsection (2); and
244 (ii) to collect an amount sufficient to cover the budget and costs to administer the
245 duties of the office.

246 (b) The department shall annually adjust the fees established in accordance with
247 Subsection (3)(a) to account for inflation and other budgetary factors.

248 (4) Each railroad that operates within this state shall pay to the office the fees described
249 and established by the office.

250 Section 7. Section **72-17-106** is enacted to read:

251 **72-17-106. Office of Rail Safety Account.**

252 (1) There is created an expendable special revenue fund called the Office of Rail Safety
253 Account.

254 (2) The account shall be funded by:

255 (a) deposits into the account by the Legislature;

256 (b) fees collected pursuant to Section [72-17-105](#); and

257 (c) other deposits or donations into the account.

258 (3) The office shall provide a detailed budget to account for the office's expenditures
259 related to the enforcement of this part, including:

260 (a) salaries, per diem, and travel expenses of employees performing the duties
261 described in this part;

262 (b) expenditures for clerical and support staff directly associated with the duties
263 described in this part;

264 (c) expenditures for legal staff who pursue and administer complaints and compliance
265 issues related to this part; and

266 (d) reasonable overhead costs related to Subsections (3)(a) through (c).

267 (4) The office, in performing the duties under this part:

268 (a) shall limit the expenditure of funds to the total amount of fees collected from the
269 railroads as described in this section; and

270 (b) may not expend funds from other sources accessible to the department.

271 Section 8. Section **72-17-107** is enacted to read:

272 **72-17-107. Rulemaking regarding railroad clearances and walkways.**

273 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

274 department shall make rules to establish safety standards related to:

- 275 (1) walkways adjacent to railroad track;
- 276 (2) clearances of structures and other obstructions near railroad track;
- 277 (3) the safety of office personnel conducting inspections in accordance with this part;
- 278 (4) railroad infrastructure and work spaces for railroad workers;
- 279 (5) signage related to railroad worker safety; and
- 280 (6) other safety standards as the department finds necessary.

281 Section 9. Section **72-17-108** is enacted to read:

282 **72-17-108. Agreements to indemnify in a railroad contract.**

283 (1) As used in this section:

284 (a) "Railroad contract" means a contract or agreement between:

285 (i) a railroad; and

286 (ii) another person that could be subject to a civil penalty or fine issued pursuant to this
287 chapter.

288 (b) "Indemnification provision" means a covenant, promise, agreement, or
289 understanding in, in connection with, or collateral to a railroad contract that requires the person
290 to insure, hold harmless, indemnify, or defend the railroad against liability, if:

291 (i) the damages arise out of a civil penalty issued pursuant to this chapter; and

292 (ii) the damages are caused by or resulting from the fault of the railroad or the
293 railroad's agents or employees.

294 (2) Except as provided in Subsection (3), an indemnification provision in a railroad
295 contract is against public policy and is void and unenforceable.

296 (3) If an indemnification provision is included in a railroad contract, in any action for
297 damages described in Subsection (1)(b)(i), the railroad may seek indemnification from another
298 party to a railroad contract pro rata based on the proportional share of fault of each party, if:

299 (a) the damages are caused in part by the party other than the railroad;

300 (b) the cause of the damages arose at a time when the party other than the railroad was
301 operating pursuant to the railroad contract.

302 (4) This section may not be construed to impair a contract in existence before May 3,
303 2023.

304 Section 10. **Coordinating H.B. 63 with H.B. 232 -- Substantive and technical**

305 **amendments.**

306 If this H.B. 63 and H.B. 232, Railroad Crossing Maintenance Amendments, both pass
307 and become law, it is the intent of the Legislature that the Office of Legislative Research and
308 General Counsel shall prepare the Utah Code database for publication as follows:

309 (1) renumbering Title 72, Chapter 7, Part 6, Regulation of Highway-Railroad Grade
310 Crossings, in H.B. 232 to be Title 72, Chapter 17, Part 2, Regulation of Highway-Railroad
311 Grade Crossings;

312 (2) renumbering Section 72-7-601 in H.B. 232 to be Section 72-17-201;

313 (3) renumbering Section 72-7-602 in H.B. 232 to be Section 72-17-202; and

314 (4) replacing the language "Section 72-7-602" with "Section 72-17-202" in Section
315 72-7-102.